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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/767,473
Filing Date: January 29, 2004
Appellant(s): PROEHL ET AL.

Miller Patent Services
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/10/09 appealing from the Office action
mailed 3/19/09.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,678,891	Wilcox	01-2004
6,753,928	Gospel et al.	06-2004
6,505,348	Knowles et al.	01-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 104 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilcox et al. ("Wilcox", US 6,678,891 B1) in view of Gospel et al. ("Gospel", US 6,753,928 B1), and further in view of Knowles et al. ("Knowles", US 6,505,348 B1).

As per claim 104, Wilcox teaches, in an audio/visual (AV) system, a method for navigation of menu options available to a user of the AV system comprising: entering a graphical user interface (GUI) in a menu system that is displayed on a display (figs. 3-4); generating a signal for displaying a first navigable list of menu options on the display with one of the menu options shown at a location of the display being highlighted, the first navigable list of menu options having a plurality of fields arranged in a first linear configuration (fig. 7; col. 23, lines 15-25; element 112 having fields 120 arranged in a first linear configuration with menu option highlighted (110) and may be place in various locations on the display); responsive to a navigation command from a remote controller,

moving the first navigable list of menu options of the GUI to cause another field of the plurality of fields to move to the location that is highlighted, and thus highlight the another field (figs. 3-4 and 7; scrolling/moving via remote controller to cause another field of the plurality of fields to move to highlighted 110); responsive to a navigation command from the remote controller, generating a signal for displaying a second navigable list of menu options associated with the highlighted field, the second navigable list of menu options arranged in a second linearly configured set of fields which intersect the first linear configuration of fields of the first navigable list of menu options at the highlighted location (figs. 3-4 and 7; second navigable list of menu options 114 of second linear configuration having fields 122 and intersects the first linear configuration wherein second navigable list is associated with the highlighted 110); navigating to a menu option of the second navigable list of menu options in response to a navigation command wherein the first linear configuration of the first menu is oriented substantially horizontally, and the second linear configuration of the second menu is oriented substantially vertically (figs. 3-4 and 7; scrolling/moving via remote controller to cause another field of the plurality of fields to move to highlighted 128); and selecting the menu option of the second navigable list in response to a selection command from the remote controller (figs. 3-4 and 7; col. 23, lines 15-32; claim 12).

Wilcox does not explicitly disclose menu options that overlays AV content on the display while the AV content is currently playing, i.e., navigation of menu options being displayed simultaneously with playing of AV content. Gospel teaches an overlay menu

being displayed simultaneously with playing of AV content (figs. 3-8; col. 2, lines 1-18; col. 3, lines 38-49; menus are overlaid on the currently tuned/selected live video). In view of KSR, 127 S. Ct. 1727 at 1742, 82 USPQ2d at 1397 (2007), it would have been obvious to an artisan at the time of the invention to incorporate the method of Gospel with the method of Wilcox in order to provide users with tuning/selection feedback and confirmation.

Wilcox and Gospel do not explicitly disclose AV content currently playing on the display that continues to play unless the menu option selected is a menu option that begins playing a different selection of AV content and, moreover, upon selection of the menu option from the second navigable list, ceasing the generating of the signals for displaying the first and second navigable list of menu options so that the first and second navigable list of menu options disappear from the display and playing/taking an action associated with the menu selection. Knowles teaches AV content currently playing on the display that continues to play unless the menu option selected is a menu option that begins playing a different selection of AV content and, moreover, upon selection of the menu option from the second navigable list, ceasing the generating of the signals for displaying the first and second navigable list of menu options so that the first and second navigable list of menu options disappear from the display and playing/taking an action associated with the menu selection (col. 15, lines 1-19). In view of KSR, 127 S. Ct. 1727 at 1742, 82 USPQ2d at 1397 (2007), it would have been obvious to an artisan at the time of the invention to incorporate the method of Knowles with the

method of Wilcox and Gospel so that users may view other AV content without cluttering of the view.

(10) Response to Argument

Appellant's arguments filed 8/10/09 have been fully considered but they are not persuasive.

Appellant argued:

The Wilcox reference at least does not teach or suggest a second navigable list of menu options arranged in a second linearly configured set of fields which intersect the first linear configuration of fields of the first navigable list of menu options at the highlighted location. Moreover, Wilcox cannot be modified and combined without rendering the Wilcox reference unsatisfactory for its purpose and such modification would render the Wilcox reference unsatisfactory because the Wilcox reference discloses that the category item icon nodes and the menu item icon nodes may be placed in various locations on a television display device.

And, since the Knowles reference requires either a timeout to expire or requires a user interaction with a specific button (e.g., the SELECT button) to tune to a new channel, the Knowles reference does not teach or suggest claimed "unless" conditional. Furthermore, one cannot use a hindsight reconstruction.

The Office disagrees for the following reasons:

Wilcox teaches a second navigable list of menu options arranged in a second linearly configured set of fields which intersect the first linear configuration of fields of

the first navigable list of menu options at the highlighted location (e.g., figs. 7-8 displays a second navigable list of menu options arranged in a second linearly configured set of fields intercepting the first linear configuration of fields of the first navigable list of menu options at the highlighted location, a second navigable list of menu options arranged in a second linearly configured set of fields meet/connects to the first linear configuration of fields of the first navigable list of menu options at the highlighted location in fig. 18, and fig. 101 displays a second navigable list of menu options arranged in a second linearly configured set of fields that intersects or overlaps the first linear configuration of fields of the first navigable list of menu options at the highlighted location).

While the teaching extracted from Gospel was for the feature of an overlay menu being displayed simultaneously with playing of AV content (figs. 3-8; col. 2, lines 1-18; col. 3, lines 38-49; menus are overlaid on the currently tuned/selected live video) given that although there are many known reasons for the use of such overlays, a common reason is to provide users with tuning/selection feedback and confirmation, the teaching extracted from Knowles was for the feature of AV content currently playing on the display that continues to play unless the menu option selected is a menu option that begins playing a different selection of AV content and, moreover, upon selection of the menu option from the second navigable list, ceasing the generating of the signals for displaying the first and second navigable list of menu options so that the first and second navigable list of menu options disappear from the display and playing/taking an action associated with the menu selection (col. 15, lines 1-19) so that users may view

other AV content without cluttering of the view, especially in cases where a plurality of menus or nested menus are required with limited display real estate.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Le Nguyen / Le Nguyen/

Conferees:

Dennis Chow

/DENNIS-DOON CHOW/

Supervisory Patent Examiner, Art Unit 2174

/Stephen S. Hong/

Supervisory Patent Examiner, Art Unit 2178